

# **EXHIBIT 1**

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LISA CORSON,

Plaintiff,

Index No.

-against-

1:16-cv-00545-AKH-DCF

BROWN HARRIS STEVENS OF THE HAMPTONS, LLC,  
Defendant.

Duane Morris, LLP  
1540 Broadway, Suite 1400  
New York, New York 10036

November 3, 2016  
1:20 p.m.

EXAMINATION BEFORE TRIAL of ERIK  
DAVIDOWICZ, the Witness appearing on behalf of  
the Defendant herein, held at the  
above-mentioned time and place, pursuant to  
Court Order, before Ilysa A. Linzer, a Notary  
Public in and for the State of New York.

MAGNA LEGAL SERVICES  
320 West 37th Street, 12th Floor  
New York, New York 10018  
(866) MAGNA-21

Page 2

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2 A P P E A R A N C E S:

3

4 DUANE MORRIS, LLP

Attorneys for Plaintiff

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1540 Broadway, Suite 1400

New York, New York 10036

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BY: KEVIN P. POTERE, ESQ.

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8 LAW OFFICES OF ANDREW P. SAULITIS

Attorneys for Defendant

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40 Wall Street, 37th Floor

New York, New York 10005

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BY: ANDREW P. SAULITIS, ESQ.

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Page 3

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2       E R I K    D A V I D O W I C Z ,

3                   the Witness appearing on behalf of the  
4                   Defendant herein, having been duly sworn  
5                   by the Notary Public, was examined and  
6                   testified as follows:

7       EXAMINATION BY

8       MR. POTERE:

9               Q.    State your name for the record,  
10      please.

11       A.    Erik Davidowicz.

12       Q.    State your address for the record,  
13      please.

14       A.    27 Main Street, East Hampton, New  
15      York 11937.

16               MR. SAULITIS: The  
17               transcript may be sworn to before  
18               any officer authorized to  
19               administer oaths. And request  
20               will be made for a copy of the  
21               transcript to be provided to the  
22               Witness pursuant to the procedures  
23               in Federal Rule of Civil  
24               Procedures 30. I normally say  
25               that at the end, but I will say it

1 E. DAVIDOWICZ

2 coordinator.

3 Q. Okay. What were your primary  
4 responsibilities as advertising coordinator?

5                   A.        Planning and organizing print ads  
6    mostly, catalogs, web advertising, and working  
7    with the president of the company directly.

8 Q. All right. So did your position  
9 change after that company was acquired?

10                   A.        It actually -- yes, but not  
11   immediately.  The company was growing, and so  
12   the responsibilities grew as well.

13 Q. So how long would you say you had  
14 your first position for with those --

15 A. About three years.

16 Q. Okay. And then what did your  
17 position grow into?

18 A. Director of advertising.

19 Q. And that was for the new entity,  
20 Brown Harris?

21 A. Yes.

22 Q. As director of advertising, what  
23 were your new responsibilities?

24                   A.        They were primarily the same just  
25    enhanced really.  We were growing as a company.

Page 20

1 E. DAVIDOWICZ

2 Q. So let's back up a second. So you  
3 did gather documents to respond to some of these  
4 topics?

5 A. Yes.

6 Q. What documents did you gather to  
7 respond to these topics?

8 A. Google Analytics reports.

9 Q. Which you mentioned earlier?

10 A. Right.

11 Q. Any other documents besides that?

12 A. No.

13 Q. Did you speak to anyone in regards  
14 to any of these topics, other than your Counsel,  
15 to be able to address these topics?

16 A. No.

17 Q. All right.

18 MR. POTERE: This is going  
19 to be a two part exhibit,  
20 Exhibit 2 and 3. Actually, there  
21 are going to be three documents,  
22 so it will be extra confusing for  
23 you.

24 Exhibit 2 is going to be a  
25 Wall Street Journal article

9 MR. POTERE: Exhibit 2A is  
10 just an enlargement of this  
11 article. I will represent on the  
12 record that it is the exact same  
13 document just re-photocopied to  
14 make it bigger so that the Witness  
15 can actually read it.

16 (Whereupon, enlargement of  
17 Exhibit 2 was marked as Davidowicz  
18 Exhibit 2A for identification, as  
19 of this date.)

20 MR. POTERE: Exhibit 3 --  
21 actually, can we go back to  
22 Exhibit 2, it is Bates stamped LOC  
23 00041 and LOC 00040. It is in  
24 reverse order.

25 Exhibit 3 is Bates stamped

1 E. DAVIDOWICZ  
2 DDP 000005 and it is a blog post  
3 from the Brown Harris Stevens  
4 website. It has the same title,  
5 "the Race to the 100 Million Spec  
6 House."

7 (Whereupon, blog post from  
8 the Brown Harris Stevens website  
9 was marked as Davidowicz Exhibit 3  
10 for identification, as of this  
11 date.)

12 Q. Does that make sense, this is just  
13 an enlargement?

14 A. Yes.

15 Q. And this is Exhibit 3. I will give  
16 your Counsel a copy of everything, and if you  
17 can take a moment to familiarize yourself with  
18 those documents.

19 A. (Perusing.)

20 Q. For Exhibit 1, maybe put it face  
21 down here.

22 A. This one?

23 Q. Here. To keep ourselves from going  
24 crazy with all of the exhibits.

25 A. Okay.

Page 23

1 E. DAVIDOWICZ

2 Q. Have you had an opportunity to look  
3 at these documents?

4 A. Yes.

5 Q. Have you seen these documents  
6 before?

7 A. I've seen the original.

8 Q. Let's go through each one  
9 individually. Exhibit 2, the Wall Street  
10 Journal article, have you seen that document  
11 before?

12 A. Yes, the article I have seen.

13 MR. SAULITIS: Let's make  
14 this -- because it may be unclear  
15 to the reader of the transcript.  
16 What I understand Exhibit 2A to be  
17 is a reprint of a print edition of  
18 an article.

19 MR. POTERE: It is actually  
20 just the exhibit, Exhibit 2  
21 enlarged.

22 MR. SAULITIS: And  
23 Exhibit 2, which is headed:  
24 "Mansion" something, it appears to  
25 be from a print edition of the

Page 24

1 E. DAVIDOWICZ

2 Wall Street Journal.

3 MR. POTERE: We produced  
4 the document. I don't know the  
5 origin of it. It is a Wall Street  
6 Journal article.

7 MR. SAULITIS: Yeah,  
8 because what --

9 THE WITNESS: It does look  
10 like a print edition.

11 MR. SAULITIS: Yeah, what I  
12 just -- because we are going to  
13 lead to confusion, my  
14 understanding is that whatever the  
15 original -- whatever the Witness  
16 looked at and saw was online.

17 MR. POTERE: I understand.

18 MR. SAULITIS: And I think  
19 the purpose of showing this was to  
20 be able to assist to read the  
21 article because the one that is  
22 screen print of what was online  
23 contains very small type.

24 MR. POTERE: There is  
25 another purpose as well.

1 E. DAVIDOWICZ

2 MR. SAULITIS: So be

3 careful because if you haven't

4 physically seen the print edition,

5 unless you say something like

6 that, the reader will think you

7 read it, the article, and this was

8 something that you read or

9 whatever, so be careful to, you

10 know, differentiate between what

11 you actually experienced versus

12 what has been put in front of you.

13 THE WITNESS: Okay.

14 Q. Let me ask a couple of questions.  
15 Have you seen the print edition of this article  
16 before?

17 A. No, I have not.

18 Q. Have you seen an electronic version  
19 of this article before?

20 A. Yes.

21 Q. To the best of your recollection, is  
22 the print version you are looking at now similar  
23 to the online version that you originally saw?

24 MR. SAULITIS: Objection to  
25 form.

Page 26

1 E. DAVIDOWICZ

2 MR. POTERE: That's fine.

3 A. It has been quite a long time, but  
4 to the best of my recollection, yes, it is  
5 similar, obviously the content.

6 Q. Approximately when was the first  
7 time you saw the article in online form?

8 A. I believe it was the day that it was  
9 published, which was March 20th of 2015.

10 Q. And so you -- did you receive an  
11 e-mail that contained the document, or were you  
12 looking online and you saw it online somewhere?

13 MR. SAULITIS: Objection to  
14 form.

15 A. I was looking online, reading the  
16 Wall Street Journal.

17 Q. So you first saw it on the Wall  
18 Street Journal's website; is that correct?

19 A. That's correct.

20 Q. You believe you saw it the day the  
21 article was posted to the Wall Street Journal  
22 website?

23 A. To the best of my recollection I  
24 believe.

25 Q. Okay. So looking at Exhibit 2 and

1 E. DAVIDOWICZ

2 Exhibit 2A, and then looking over at Exhibit 3,  
3 I know it is a little confusing, would you say  
4 that the contents of the Wall Street Journal  
5 article were what you used to create the blog  
6 post that is represented as Exhibit 3?

7 MR. SAULITIS: Objection to  
8 form.

9 A. Yes, the blog post was directly  
10 based on the Wall Street Journal article, that  
11 was what was done.

12 Q. And so who was responsible for  
13 copying the Wall Street Journal article?

14 A. I was.

15 Q. Okay. When approximately did you  
16 copy the article?

17 A. I believe it was the same day when I  
18 read the article.

19 Q. Okay. How did you copy the article  
20 to create the Brown Harris blog post?

21 A. Simply by using electronic copy and  
22 paste tools.

23 Q. Okay. And so who at Brown Harris  
24 gave you permission to copy the article?

25 MR. SAULITIS: Objection to

1 E. DAVIDOWICZ

2 form.

3 A. I made the decision to do so.

4 Q. Have you copied similar articles in  
5 the past to create blog posts on the Brown  
6 Harris website?

7 A. Yes.

8 Q. And have you ever spoken to a  
9 superior about this practice of copying articles  
10 and posting them into the Brown Harris website?

11 MR. SAULITIS: Objection to  
12 form.

13 A. I don't think there were any  
14 specific conversations about the exact process  
15 of doing it, but we have had discussions  
16 about maintaining the blog, and putting content  
17 into it.

18 Q. Did you contact anyone at the Wall  
19 Street Journal to gain permission to copy the  
20 article?

21 A. No, I did not.

22 Q. Did you review the Wall Street  
23 Journal's licensing policies before copying the  
24 article?

25 A. No, I did not.

1 E. DAVIDOWICZ

2 Q. Did Brown Harris pay anything to the  
3 Wall Street journal for use of the article?

4 A. Not to my knowledge.

5 Q. Were other Wall Street Journal  
6 articles used by Brown Harris to create blog  
7 posts?

8                   A.        That I don't know. I don't recall.

9 It is possible, but I couldn't say for  
10 certainty without reviewing all of the blog  
11 items in the past.

12 Q. Can you take a look specifically at  
13 Exhibit 3.

14 A. Mm - hmm.

15 Q. So who selected the photograph that  
16 was used in the blog post that's represented in  
17 Exhibit 3?

18 MR. SAULITIS: Objection to  
19 form.

20 A. I made that selection.

21 O. How did you make that selection?

22                   A.        That I couldn't really say. It has  
23    been quite a while. I believe I was looking  
24    for an appropriate image to go with the blog  
25    item.

Page 30

1 E. DAVIDOWICZ

2 Q. Understand.

3 A. Why that particular one was  
4 selected, aside from maybe catching my eye, I  
5 couldn't say for sure.

6 Q. Now, here is where the magnifying  
7 glass may come into play. If you turn the page  
8 of both Exhibit 2 and Exhibit 2A, I will  
9 represent that there are basically four lines  
10 going horizontally of photographs, and the  
11 fourth line has four individual pictures in it.

12 Do you see that?

13 A. Yes, I do.

14 Q. Do you see the second picture in  
15 that row of four pictures?

16 A. I do.

17 Q. And is that the same picture that  
18 was copied and pasted into the Brown Harris blog  
19 post in Exhibit 3?

20 MR. SAULITIS: Objection to  
21 form.

22 A. It certainly looks like it is the  
23 same photo.

24 Q. Okay. If you look at that same row,  
25 and feel free to use the magnifying glass, can

Page 31

1 E. DAVIDOWICZ

2 you see that there is a credit, a photographer  
3 credit running up the side of the photographs?

4 A. Yes, I can.

5 Q. I don't know if you are able to make  
6 out, can you make out the name that's associated  
7 with that?

8 A. Looks like Lisa Corson for the Wall  
9 Street Journal, then there is a number in  
10 parentheses.

11 Q. Can you take another look at  
12 Exhibit 3, the photograph incorporated into the  
13 blog post?

14 A. Yes.

15 Q. Do you see any photograph credit for  
16 Lisa Corson in the blog post?

17 A. No.

18 Q. What was the reason for leaving out  
19 the photography credit in the blog post?

20 MR. SAULITIS: Objection to  
21 form.

22 A. The structure of the blog, the way  
23 it was created didn't have a space basically  
24 for such a credit, it wasn't designed for those  
25 purposes.

1 E. DAVIDOWICZ

2 Q. When you say "the structure of the  
3 blog," do you mean the computer program you were  
4 using to generate the blog?

5 A. Correct.

6 Q. What was the name of that computer  
7 program?

8           A.       I don't know.  I am not the web  
9        developer.  It was developed by an outside  
10       consultant who works for the company.

11 Q. Okay. Were any steps taken to  
12 contact Lisa Corson to gain permission to use  
13 the photograph in question?

14 A. NO.

15 Q. Were any of the other photographers  
16 whose photographs were used in the Wall Street  
17 Journal article represented in Exhibit 2  
18 contacted about their photographs for use in the  
19 blog post?

20 A. NO.

21 Q. Did Brown Harris Stevens believe  
22 that copying Ms. Corson's photograph without her  
23 permission infringed upon her copyright?

24 MR. SAULITIS: Objection to  
25 form.

1 E. DAVIDOWICZ

2 A. I couldn't say what Brown Harris  
3 Stevens as a corporation, I couldn't say.

4 Q. But you understand that you are here  
5 today as a witness representing the corporation;  
6 right?

7 MR. SAULITIS: He's not  
8 here to represent anyone's mind.

9 MR. POTERE: Actually, I am  
10 going to ask him the question.  
11 Please don't interrupt.

12 MR. SAULITIS: Your  
13 question was misleading, Counsel.

14 MR. POTERE: You can object  
15 to the form, but he can answer the  
16 questions.

17 MR. SAULITIS: Objection to  
18 form.

19 Q. Do you understand the question or  
20 would you like it repeated back to you?

21 A. I understand.

22 Q. So as a 30C(b) (6) Witness  
23 representing Brown Harris Stevens, did you  
24 believe that copying Ms. Corson's photograph  
25 without her permission infringed upon her

Page 34

1 E. DAVIDOWICZ

2 copyright?

3 MR. SAULITIS: Objection.

4 He's not a 30(b)(6) witness as to  
5 the operation of the mind of  
6 anyone but himself, let me be  
7 clear on that. None of the topics  
8 in the 30(b)(6) notice requested a  
9 witness on any of the mental  
10 processes of the individuals  
11 within the organization. So he's  
12 not here to attest to any of those  
13 things, and I am specifically  
14 excluding that from any  
15 designation that may be applicable  
16 to this Witness. You may ask him  
17 his own mental processes, but no  
18 answer he gives in that regard is  
19 going to be deemed testimony on  
20 behalf of anyone but himself.

21 MR. POTERE: Okay. So your  
22 objection is noted for the record.

23 Q. Did you understand the question?

24 A. Yes.

25 Q. Can you answer it, please?

1 E. DAVIDOWICZ

2           A.     I don't believe that I felt that  
3     there was any copyright infringement at the  
4     time.  We were linking directly to the original  
5     source of the article with the blog, and by  
6     doing so I believed that that was adequate at  
7     the time.

8 Q. So because he objected to my  
9 original question, which was as a 30(b)(6)  
10 witness, and you answered "I," let me ask the  
11 question again, but asking you individually, and  
12 you can answer the question again however you  
13 like.

14 So you personally as an individual,  
15 the person that selected the photograph, did you  
16 believe that you were violating Ms. Corson's  
17 copyright by copying and pasting it into the  
18 blog?

19 A. No, I did not believe that.

20 Q. Okay. Why did you not believe that?

21 MR. SAULITIS: Objection to  
22 form.

1 E. DAVIDOWICZ

2 recreating it, or paraphrasing, and providing a  
3 link directly to the original source of the  
4 article, and crediting the source of the  
5 article that that was adequate.

6 Q. Did you believe that you personally  
7 infringed upon anyone's intellectual property by  
8 copying the picture and posting it into the  
9 blog?

10 A. No, I did not.

11 Q. So when was the photograph first  
12 displayed on the Brown Harris blog?

13                   A.        I believe, I can't say for certain,  
14                   but I believe it was the same date, March 20,  
15                   2015.

16 Q. Okay.

17           A.       I don't think there would have been  
18       any time lag.

19 Q. Where was the photograph stored  
20 after it was copied and pasted into the blog?

21 MR. SAULITIS: Objection to  
22 form. To avoid -- when you say  
23 "the photograph," is that -- do  
24 you mean separately from the  
25 article, or -- I am confused, and

1 E. DAVIDOWICZ

2 perhaps the reader would be, too.

5 Do you understand my confusion? I

6 don't know if the witness shares

7 that, he can say so.

8 Q. Let's take a step back. You copied  
9 the article from the Wall Street Journal online  
10 source, and pasted it somehow into the Brown  
11 Harris Stevens blog; is that correct?

12                   A.        That is correct.

13 Q. When you first copied the article,  
14 where did you -- did you paste it directly into  
15 the blog, or did you save it somewhere else on  
16 the Brown Harris Stevens server?

17           A.       The text of the article, the words  
18       themselves were copied and pasted directly into  
19       the blog itself.   The photograph is handled  
20       differently, it can't be copied and pasted.

21 O. So how is a photograph handled?

22                   A.        The photograph was stored on my  
23        local hard drive of my work computer  
24        temporarily so I can then upload it into the  
25        blog through an image uploader.

1 E. DAVIDOWICZ

2 Q. I understand. So I -- through my  
3 own experience I know when I save a picture off  
4 the Internet I usually right click on the  
5 photograph and do save as. Did you do a similar  
6 process to copy the image from the online source  
7 on to your local server?

8 A. I believe that's how it was done.

9 Q. Then the photograph, once it was on  
10 your local server, was then uploaded onto the  
11 blog post using the proprietary software that  
12 was developed for Brown Harris Stevens; correct?

13 A. Correct.

14 Q. Is the photograph still saved  
15 locally on your hard drive?

16 A. No, it is not.

17 Q. To your knowledge, is the photograph  
18 stored anywhere on the Brown Harris Stevens  
19 servers?

20 A. Not to my knowledge, I don't believe  
21 so.

22 Q. As a 30C(b)(6) Witness, do you know  
23 whether the photograph is stored anywhere on the  
24 Brown Harris Stevens server?

25 MR. SAULITIS: Objection to

1 E. DAVIDOWICZ

2 form.

3 A. I don't believe so. From my  
4 knowledge of how our system is currently  
5 operating, I don't believe it would exist  
6 anywhere. It was saved on my local hard drive,  
7 not on a server.

8 Q. Is there anyone that works at Brown  
9 Harris, or consults with Brown Harris Stevens  
10 who would have a better idea of whether the  
11 photograph is still stored in some way on the  
12 server?

13 MR. SAULITIS: Objection to  
14 form.

15 A. It is possible that an IT consultant  
16 would have an understanding of that.

17 Q. Do any IT consultants' names come to  
18 mind that would have knowledge of that?

19 A. Yes, Walfrid Lundborg, W-A-L-F-R-I-D  
20 L-U-N-D-B-O-R-G.

21 Q. Was he employed at Brown Harris  
22 Stevens at the time that the photograph was  
23 originally copied into the blog post?

24 MR. SAULITIS: Objection to  
25 form. Employed by?

1 E. DAVIDOWICZ

2           A.       Yes, to my knowledge. I am not the  
3       technical expert, but that was the intention,  
4       and the belief, and purpose of removing it.  
5       Not just to be invisible.

6 Q. To your knowledge, has anyone else  
7 requested to have a photograph taken down from  
8 the Brown Harris Stevens blog?

9 A. No.

10 Q. We are going to look at something  
11 that doesn't require a magnifying glass.

12 MR. POTERE: I am going to  
13 introduce this as Exhibit 4, and  
14 this is what I would categorize as  
15 more screen shots from the Brown  
16 Harris Stevens website. They bear  
17 Bates stamped DDP 000006 through  
18 DDP 000015.

19 (Whereupon, screen shots  
20 from the Brown Harris Stevens  
21 website was marked as Davidowicz  
22 Exhibit 4 for identification, as  
23 of this date.)

24 MR. SAULITIS: For the  
25 benefit of the Witness the code

1 E. DAVIDOWICZ  
2 stands for Defendant's document  
3 production. In order words, it  
4 came from Brown Harris. That code  
5 is not part of the document. It  
6 was added for the convenience of  
7 all of us.

8 THE WITNESS: Okay.

9 Q. Take a moment to flip through those.

10 A. (Perusing.)

11 Q. So are you familiar with the images  
12 there portrayed in Exhibit 4?

13 A. Most of them, yes.

14 Q. Can you tell me which ones you are  
15 not familiar with?

16 MR. SAULITIS: Objection to  
17 form.

18 A. It looks like DDP 14.

19 Q. So you haven't seen that one in the  
20 past?

21 A. No.

22 Q. Okay. For the documents -- for the  
23 portions of Exhibit 4 that you are familiar  
24 with, when have you seen these before?

25 A. Do you mean the originals, or the

1 E. DAVIDOWICZ

2 reproduction of the document?

3 Q. Why don't we start with the  
4 originals.

5 A. Well, whenever -- since I work in  
6 the marketing department I am familiar with our  
7 website and most of its contents, so I couldn't  
8 say when I've seen any individual item, but it  
9 is familiar to me because of my work with the  
10 website.

11 Q. Okay. So does this appear to be  
12 screen shots taken off the Brown Harris Stevens  
13 website? When I say "this" I mean everything  
14 except for the exhibit you pointed out, which is  
15 ending in 14.

16 A. Yes, I believe so. At the time, I  
17 should say at least. These wouldn't be  
18 accurate screen shots taken today, for  
19 instance.

20 Q. I understand. So what is "the Talk  
21 of the Town?" I've seen that listed on the  
22 first page, DDP 000006, and it is referenced  
23 throughout the exhibit.

24 A. Right. "Talk of the Town" was the  
25 nickname, or name of the blog itself that was

1 E. DAVIDOWICZ

2 part of Brown Harris Stevens.

3 Q. If you can just refer back to  
4 Exhibit 3 for just a moment. Was Exhibit 3,  
5 which is the blog post containing the photograph  
6 of Lisa Corson, was that included in the blog,  
7 "the Talk of the Town?"

8 A. Yes, it is.

9 Q. All right. So when was the, I am  
10 going to refer to "the Talk of the Town" as "the  
11 blog" going forward just to make it easier for  
12 everyone?

13 A. Sure.

14 Q. When was "the blog" first created?

15 A. I believe it was in the first half  
16 of 2013.

17 Q. 2013. Who was primarily responsible  
18 for creating the blog?

19 A. It wasn't a single person. At the  
20 time we were redesigning the entire website,  
21 and by "we" I mean Sia Comnas, the previous  
22 senior managing director, Ed Riale (phonetic)  
23 at the time, myself, and Walfrid Lundborg.

24 Q. Who was responsible for inserting  
25 the content into the blog starting back in 2013?

1 E. DAVIDOWICZ

2 If there is more than one individual, you can  
3 list those individuals. What I mean by that,  
4 just to clarify, the person that was physically  
5 taking the articles, and pasting them into the  
6 blog space?

7 A. I was.

8 Q. Was anyone else responsible for the  
9 physical activity of taking articles, and  
10 putting them into the blog?

11 A. NO.

12 Q. So if you look at the first page  
13 here, DDP 000006, that blog post is dated  
14 December 31, 2015. Do you see that?

15 A. Yes.

16 Q. Is that the last blog that was  
17 posted to "the Talk of the Town," is that the  
18 last blog post that was posted to "the Talk of  
19 the Town" blog?

20 A. I don't know. I don't recall. It  
21 certainly could be.

22 Q. Are you still to this day posting  
23 new blogs to "the Talk of the Town?"

24 A. No, we are not.

25 Q. Why did you stop posting blogs to

1 E. DAVIDOWICZ

2 information that you told her about the lawsuit?

3 MR. SAULITIS: Objection to  
4 form.

5 A. I am sure she said something, but  
6 honestly I can't recall. I don't think it was  
7 very much. It was just she wanted information  
8 about what it pertained to. Beyond that, I  
9 believe she thought that it was going to be a  
10 matter handled by Counsel.

11 Q. So the decision to stop the blog was  
12 entirely left to you, and no one told you to  
13 stop making blog posts; is that correct?

14 MR. SAULITIS: Objection to  
15 form.

16 A. It was my suggestion to do so, and  
17 my manager approved of that. But it was my  
18 initial decision or suggestion to do so.

19 Q. I understand. You said part of the  
20 reason for deciding not to continue updating the  
21 blog was the fact that it wasn't serving its  
22 purpose, which was to drive traffic to the  
23 website; is that correct?

24 A. Yes.

25 Q. And so when you say "traffic," what

1 E. DAVIDOWICZ

2 do you mean by "traffic?"

3 A. What users -- obviously as a website  
4 we want people, the users, to come to our site  
5 as frequently as possible, not just on a one  
6 time basis. Part of the original thinking was  
7 that if we included more content on the  
8 website, we might invite people to return to  
9 the site. Over time, when looking at which  
10 pages people were visiting, the blog was not  
11 one of the highly ranked pages that people were  
12 visiting.

13 Q. Did you advertise the blog, did  
14 Brown Harris Stevens advertise the blog in any  
15 way, shape, or form?

16 A. No, we never had.

17 Q. Were there ever any paid  
18 advertisements posted in connection with the  
19 blog?

20 A. No.

21 Q. Did you receive any advertising  
22 revenue at all with regards to the blog itself?

23 A. No.

24 Q. Can you take a look at same exhibit,  
25 Exhibit 4, DDP 000011.

1 E. DAVIDOWICZ

2 A. (Witness complies.)

3 Q. If you look at what I believe to be  
4 an advertisements on the right-hand side that  
5 says "Hamptonsbuilders.com." Who paid for that  
6 to be there?

7           A.       No one.  It is not a paid  
8       advertisement.  We, Brown Harris Stevens, owned  
9       Hamptonsbuilders.com.  It has a website that we  
10      maintain and develop to advertise solely houses  
11      that are listed with Brown Harris Stevens.

12 Q. I see. Was part of placing that  
13 next to "the Talk of the Town" blog to promote  
14 that particular service?

15 A. Its position was not relevant to  
16 "the Talk of the Town." It was more relevant  
17 to the navigation on the right side of the  
18 page.

19 Q. So I understand that the blog is not  
20 currently being maintained. Do you know what  
21 the budget for the blog was being maintained?

22 A. There was no specific budget set  
23 aside for any particular part of the website  
24 including the blog.

25 Q. Were there any costs, besides your

1 E. DAVIDOWICZ

2 own salary, associated with maintaining the  
3 blog?

4 A. No.

5 MR. SAULITIS: Objection to  
6 form.

7                   A.        Not that I am aware of.

8 Q. Was one of the goals of maintaining  
9 the blog to grow the Brown Harris brand?

10 A. I think that's fair to say. It is  
11 part of the overall, all marketing and  
12 advertising is with that in mind.

13 Q. So you wanted to generate business  
14 with the blog; is that correct?

15                   A.        No, not necessarily. I think that's  
16                   a little too direct of a relationship. A brand  
17                   is more of an awareness, and recognizability of  
18                   a company, or a name. We weren't -- the  
19                   website itself, in real estate we are not  
20                   selling items directly on the website. It is  
21                   not like a retail store. So in that sense we  
22                   are not thinking as to generate business that  
23                   way, but to generate interest in the company,  
24                   or awareness in the company.

25 Q. Were you hoping to gain future

1 E. DAVIDOWICZ

2 clients by creating the blog?

3 MR. SAULITIS: Objection to  
4 form.

5 A. Again, that wasn't the thinking in  
6 terms of a direct relationship in that sense.  
7 Again, we were looking to, in a competitive  
8 market, increase interest in visitors visiting  
9 our website.

10 Q. Did you use social media to  
11 distribute blog posts to help promote them on  
12 the website?

13 A. Not all of them, but certain  
14 specific ones

15 Q. What social media outlets did use?

16 A. We would usually Twitter, Facebook,  
17 and Google Plus.

18 Q. Did you pay any money to enhance  
19 those posts so they would go out to a broader  
20 market than otherwise would have occurred had  
21 you just posted them to the social media?

22 A. No, we have not done that.

23 Q. How did you measure the  
24 effectiveness of the blog in terms of generating  
25 traffic?

1 E. DAVIDOWICZ  
2 have an interactive form. We don't have  
3 comments or feedback from users. So to my  
4 knowledge there isn't any information collected  
5 in that sense.

6 Q. I understand. What was the purpose  
7 of posting the specific article in question,  
8 which was represented as Exhibit 2, which was  
9 then copied and pasted into the blog post, which  
10 is Exhibit 3?

11           A.     It is difficult to specify the exact  
12     interest.    But we are a real estate firm, so we  
13     were always looking for items that might  
14     pertain to real estate, and we are in the  
15     luxury market.   This particular article was  
16     about the very high end of the market, spec  
17     homes \$100 million, so I think I just thought  
18     that there was a connection, or correlation  
19     between what we were doing and potential  
20     audience for an article like that.

21 Q. You mentioned earlier the program  
22 you used to post the blogs, it sort of prevents  
23 you from posting credits to specific photographs  
24 that are posted on the blog; is that correct?

25 MR. SAULITIS: Objection to

1 E. DAVIDOWICZ

2 form.

3 A. Yes, I believe that to be the case.

4 I am not the designer of it, but from my use of  
5 the program, that is my understanding of it.

6 MR. POTERE: I am going to  
7 enter two exhibits. The first one  
8 is an article, or rather a blog  
9 post to "the Talk of the Town"  
10 blog. It is entitled "Green Roof  
11 Options Renovated Ideas From  
12 Architecture Digest." The date is  
13 November 3, 2016.

14 (Whereupon, blog post "Green  
15 Roof Options Renovated Ideas From  
16 Architecture Digest," was marked  
17 as Davidowicz Exhibit 5 for  
18 identification, as of this date.)

19 MR. POTERE: Exhibit 6 is  
20 going to be an article taken from  
21 the Architectural Digest website,  
22 and the name of the article is  
23 "Green Roof Options Renovating  
24 Ideas." The date of the article  
25 is July 31, 2015. And the date at

1 E. DAVIDOWICZ

2 the bottom of the front page of  
3 the article is November 3, 2016.

4 (Whereupon, Architectural  
5 Digest article "Green Roof Options  
6 Renovating Ideas," was marked as  
7 Davidowicz Exhibit 6 for  
8 identification, as of this date.)

9 Q. Can you take a moment to look at  
10 Exhibit 5 and Exhibit 6.

11 A. (Perusing.)

12 Q. So let's start with Exhibit 5. Do  
13 you recognize this blog post?

14                   A.        I recognize it as a blog post.  I  
15  don't particularly recall this specifically.

16 Q. But you recognize it as a blog post  
17 that was posted to "the Talk of the Town?"

18 A. I do.

19 Q. Turning to Exhibit 6, do you  
20 recognize this article in Architectural Digest?  
21 To be clear, when I say "recognize," I am  
22 talking about just the content, not the physical  
23 reproduction of the document?

24 A. Certainly, yes.

25 Q. You do recognize this article?

1 E. DAVIDOWICZ

2 A. In conjunction with the blog post I  
3 do.

4 Q. Okay. So if you look at the blog  
5 post, which is Exhibit 5, and if you look at the  
6 photograph there, do you see any photograph  
7 credit on the photograph used in the blog post?

8 A. No, I do not.

9 Q. Okay. If you look at Exhibit 6,  
10 which is the Architectural Digest article  
11 itself, do you see the photograph credit under  
12 that article?

13 A. I do.

14 Q. Do you as an individual know why the  
15 photograph credit in Exhibit 6 was not added to  
16 the photograph used in the blog post in  
17 Exhibit 5?

18 A. As I mentioned, I believe it was not  
19 included because of the structure of the blog  
20 itself, and we were linking directly to the  
21 original source of the article which contained  
22 the photograph, and all subsequent credits that  
23 it was not done, it wasn't included.

24 Q. Did you contact Architectural Digest  
25 to have permission to use their article?

1 E. DAVIDOWICZ

2 A. NO.

3 Q. Did you contact the original  
4 photographer to use the photo in the blog post?

5 A. No.

6 Q. Did you ever give credit to  
7 photographers whose photos were used in any of  
8 the blog posts that you posted to "the Talk of  
9 the Town" blog?

10 A. Not to my recollection, I don't  
11 believe so.

12 Q. Did you ever request permission to  
13 use any of the articles that were used to create  
14 the blogs that are posted to "the Talk of the  
15 Town" blog on the Brown Harris Stevens website?

16 A. NO.

17 Q. This is going to be a two-part  
18 question. Does Brown Harris Stevens have a  
19 budget for purchasing content to be displayed  
20 anywhere on the Brown Harris Stevens website?

21 A. NO.

22 Q. Does Brown Harris Stevens have a  
23 budget to purchase any content that was  
24 displayed specifically on "the Talk of the Town"  
25 blog?

1 E. DAVIDOWICZ

2 A. NO.

3 Q. Does Brown Harris Stevens license  
4 any intellectual property to be used with the  
5 Brown Harris Stevens website?

6                   A.        I am not sure I understand.    Do you  
7    mean we purchase licensing?

8 Q. That's correct.

9           A.       Not to my knowledge. I can maybe  
10      clarify that in terms of property photographs.  
11      Not for the blog, but as a company we purchase  
12      photographs from professional photographers who  
13      are commissioned to photograph properties that  
14      are listed with Brown Harris Stevens.

15 Q. Those photographs are subsequently  
16 posted to the website in conjunction with  
17 propertied listed on the website?

18 A. Correct.

19 MR. POTERE: We are going  
20 to mark this as Exhibit 7. This  
21 is entitled "the Computer Use  
22 Policy," and the Bates range is  
23 DDP 0000001 through 003.

24 (Whereupon, "the Computer  
25 Use Policy" was marked as

1 E. DAVIDOWICZ

2 Davidowicz Exhibit 7 for  
3 identification, as of this date.)

4 Q. Please take a look at the document.

5 A. (Perusing.)

6 Q. Have you seen the Computer Use  
7 Policy previously?

8 A. I believe so.

9 Q. When was the first time you saw this  
10 document?

11 A. That I couldn't say. I have been  
12 with the company for many years. It was  
13 probably a while ago.

14 Q. Who drafted this policy?

15 A. I don't know.

16 Q. Who would know who drafted this  
17 policy?

18 A. I believe someone at Tara Holdings  
19 would know. This was a document that wasn't  
20 created locally at Brown Harris Stevens of the  
21 Hamptons. It originated from the New York City  
22 office.

23 Q. How do you know that?

24 A. Because one, the language saying  
25 that Tara Holdings Group of Affiliated

1 E. DAVIDOWICZ

2 Companies in the beginning, and the document  
3 itself, I know in looking at it, wasn't  
4 something that was created locally in our  
5 company, in particular, the way it refers to  
6 the company itself.

7 Q. Do you know when this document was  
8 adopted?

9 A. I do not.

10 Q. Do you know if there are other  
11 versions of this document available?

12 A. That I don't know.

13 Q. Do you know what the purpose of this  
14 document was, or is?

15 A. Well, I can't say what someone  
16 else's intent was, but as a policy document to  
17 inform staff members and agents involved with  
18 the company as to the policies of the company.

19 Q. Did you see this document in  
20 preparation for the deposition today?

21 A. I did not.

22 Q. Does the computer use policy apply  
23 to all Brown Harris Stevens employees?

24           A.        I would believe so, but I couldn't  
25        say for certain. I don't see why it would not.

1 E. DAVIDOWICZ

2 instance, this particular specific policy, but  
3 that was my understanding.

4 Q. Without divulging the contents of  
5 conversation that you had, have you ever spoken  
6 to anyone within Brown Harris Stevens including  
7 general counsel about copyright infringement  
8 issues?

9 MR. SAULITIS: Objection.

10 That is going to be impossible to  
11 answer without breaking down --

12 MR. POTERE: He can answer  
13 whether or not he's communicating  
14 with general counsel, that's not  
15 privileged. He just can't reveal  
16 the content.

17 MR. SAULITIS: Break it  
18 down to lawyer category first, and  
19 then --

20 MR. POTERE: Sure, I can  
21 clarify that.

22 MR. SAULITIS: -- anyone  
23 else will be fair game.

24 Q. Did you ever speak to general  
25 counsel within Brown Harris Stevens or the

Page 68

1 E. DAVIDOWICZ

2 parent corporation about copyright issues in  
3 general?

4 A. Yes, after receipt of the Complaint.

5 Q. So prior to receiving the Lisa  
6 Corson Complaint, did you ever speak with  
7 general counsel at Brown Harris Stevens or the  
8 parent corporation?

9 A. No.

10 Q. Did you speak to anyone else at  
11 Brown Harris Stevens about copyright related  
12 issues?

13 A. No.

14 Q. Does Brown Harris Stevens have any  
15 other policy that you are aware of that deal  
16 with intellectual property issues including a  
17 potential copyright infringement?

18 A. Not that I am aware of.

19 (Whereupon, a short break  
20 was taken at this time.)

21 MR. POTERE: I am going to  
22 mark this as Exhibit 8. This is  
23 the Halstead Property Social Media  
24 Policy and Guidelines. It is  
25 D000024 through 29.

Page 80

1 E. DAVIDOWICZ

2 the current lawsuit in which Brown Harris  
3 Stevens had been sued for copyright or trademark  
4 infringement?

5 A. Not that I am aware of.

6 Q. Are there any lawsuits where Brown  
7 Harris Stevens has sued anyone else for  
8 copyright or trademark infringement that you are  
9 aware of?

10 A. Not that I am aware of.

11 Q. Do you know if your attorney present  
12 today is on retainer with Brown Harris Stevens?

13 A. I believe so.

14 Q. What is your basis for that belief?

15 A. I believe that he informed me of  
16 that.

17 Q. Do you know when he went onto  
18 retainer with Brown Harris Stevens?

19 A. I do not.

20 Q. Can we turn back to Exhibit 3 for a  
21 moment. You testified previously that the  
22 system you were using prevented you from  
23 inserting a photographer's credit into the  
24 photograph, or next to the photograph that you  
25 used in the blog post; is that correct?

Page 81

1 E. DAVIDOWICZ

2 MR. SAULITIS: Objection to  
3 form.

4 Q. Can you repeat for the record why  
5 you chose not to include credit for the  
6 photographer in the blog post?

7 MR. SAULITIS: Objection to  
8 form.

9 MR. POTERE: It is okay, I  
10 understand your objection.

11 A. Several different reasons. As I  
12 stated, we provided a direct link back to the  
13 source material, and so I didn't necessarily  
14 feel it was necessary to do so on the blog.  
15 But the structure of the blog itself, again, to  
16 my understanding of how it operates, and my use  
17 of it didn't allow for a credit line to  
18 function within that format.

19 Q. Did you ever inquire from any  
20 individual who had responsibility for  
21 maintaining the program that you are using, or  
22 provide some sort of support for it whether it  
23 was possible to add a photo credit?

24 A. I don't recall doing so.

25 MR. POTERE: This is going

1 E. DAVIDOWICZ  
2 to be marked as Exhibit 12. It is  
3 a letter from Babette Krolik to  
4 Steven Crowley. The Bates stamp  
5 is LOC 000005. The e-mail is  
6 dated January 5, 2016.

12 Q. Have you had an opportunity to  
13 review the exhibit in question?

14 A. Yes.

15 Q. Have you seen this exhibit prior to  
16 today?

17                   A.        Yes, and the date it was sent, I  
18   believe.

19 Q. Were you copied on this e-mail?

20 A. Yes.

21 Q. And so that's your e-mail address in  
22 the CC?

23 A. Yes, the EDavidowicz.

24 Q. So I am going to read the following  
25 sentence in the record, it occurred in the

Page 91

1

2 C E R T I F I C A T E

3

4 I, ILYSA A. LINZER, a Shorthand Reporter  
5 and Notary Public of the State of New York, do  
6 hereby certify:

7

8 That, ERIK DAVIDOWICZ, the Witness whose  
9 examination is hereinbefore set forth, was duly  
10 sworn, and that such examination is a true  
11 record of the testimony given by such  
12 Witness.

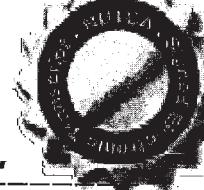
13

14 I further certify that I am not related  
15 to any of the parties to this action by blood  
16 or marriage; and that I am in no way interested  
17 in the outcome of this matter.

18

19

ILYSA A. LINZER

NOVEMBER 13, 2016

20

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23

24

25